Supreme Court, U.S.
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No. 90-891

In the

Supreme Court of the United States

October Term, 1990

CHARLES WHITE, *et al.*,

Petitioners,

v.

RAYMOND S. DANIEL, *et al.*,

Respondents.

PETITIONERS' SUPPLEMENTAL BRIEF

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PETITIONERS' SUPPLEMENTAL BRIEF

Petitioners file this supplemental brief pursuant to Sup. Ct. Rule 15.7 to call the Court's attention to a new case, *Dickinson v. Indiana State Election Board*, 1991 WL 82414, No. 90-2489 (7th Cir. May 21, 1991), that was not available at the time of petitioners' last filing.

There is a direct conflict between the decision in this case and the decision in *Dickinson* on the question whether laches is a bar to an action under § 2 of the Voting Rights Act, even where no elections are scheduled under a challenged apportionment at the time of the decision of the court of appeals because a new census was in progress. In *Dickinson*, the plaintiffs filed suit on March 2, 1990, pursuant to § 2 of the Voting Rights Act, 42 U.S.C. § 1973, challenging two house districts of the Indiana General Assembly's 1981 apportionment. The district court granted summary judgment for the defendants on the grounds that the Indiana legislature was a necessary party but was not named by the plaintiffs, and that laches and principles of equity barred injunctive and declaratory relief. More specifically, the district court held that:

> laches barred any relief because plaintiffs unjustifiably waited until 1990 to challenge an apportionment plan that had been in place since 1981. Finally, the court concluded that equitable principles weighed in favor of defendants. The then-upcoming November 6 election was near and the 1990 census was in progress, implying that the balance of hardships weighed against granting a remedy. In its discussion of equitable principles, the court also expressed concern about basing a proposed remedy on the 'stale' 1980 census data.

Slip op. at 4. Although the November 1990 elections were pending at the time the complaint was filed, by the time the case was argued in the court of appeals (on December 4, 1990) and decided (on May 21, 1991) there were no elections scheduled under the challenged 1981 apportionment.

In reversing the decision of the district court and rejecting the defense of laches, the Seventh Circuit held that even though plaintiffs waited until "the eleventh hour" to bring suit, the delay may not have been inexcusable in view of the 1982 amendment of § 2 which made it easier to show impermissible vote dilution. Slip op. at 9. The court of appeals indicated that the district court's reliance on pre-1982 cases dealing with constitutional challenges was misplaced. Slip op. at 10. As for alleged prejudice to the defendants in the form of confusion and additional costs if a second primary election were required, the court of appeals held that:

> This prejudice, even if credited, does not outweigh the plaintiffs' right to a hearing on the merits. The timing of the election cycle might well affect the remedy provided by the district court, but the [claimed prejudice] . . . , absent more compelling justification, is inadequate to establish the prejudice necessary for laches.

Slip op. at 10.

In rejecting the defendants' arguments based on equitable principles, the Seventh Circuit ruled that while the denial of injunctive relief was proper in view of the fact that the reapportionment process was imminent, it was error for the district court to deny declaratory relief on the grounds that it would be "coercive" and was unavailable as an "academic exercise." Slip op. at 12. According to the court of appeals:

> A victory on the merits would provide an important statement of plaintiffs' rights and, assuming the legislature fails to act, could also provide the impetus for further action. Moreover, we do not see how declaratory relief would, in itself, be so coercive as equitable relief.

Slip op. at 12. As far as the "stale" 1980 Census was concerned, the court held that while the data may be old, "they are the relevant data for assessing a claim under Section Two." Slip op. at 11.

Virtually every one of the arguments presented in this case to support the application of the doctrine of laches was presented and rejected in *Dickinson*. Plenary review is warranted to resolve the conflict between the decision of the court of appeals in this case and the decision of the Seventh Circuit on the same matter in *Dickinson*, as well as the decision of the Ninth Circuit in *Garza v. County of Los Angeles*, 918 F.2d 763 (9th Cir. 1990), previously noted in the petition for writ of *certiorari*.

CONCLUSION

The petition for writ of *certiorari* should be granted.

Respectfully submitted,

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